

TO: Planning Commission
FR: Jim Claus
RE: COMMENTS for the record for Cannery PUD (09-01, PA 09-05 and SUB 09-02)
DT: 10 November 2009

In reading the staff report/application by the city planner about the Cannery PUD several thoughts immediately came to mind. I would like to formally request that this hearing be continued and that the record be left open, and that the public testimony in front of the planning commission be continued.

We have fundamental objections to this application and staff report.

In no particular order:

THE CITY OF SHERWOOD/URA IS THE RETAINED OWNER AND SHOULD BE THE APPLICANT

Capstone is a group that may purchase parts of the Cannery project. The City is processing its own development and land use applications, asking for a variety of zoning exceptions and using a potential buyer as "the applicant." The application is wrong and should be rejected. Staff cannot analyze, review and produce a hearings process that is third party neutral so no favoritism and self dealing occurs.

THE APPLICATION SHOULD HAVE NEVER BEEN DEEMED COMPLETE

According to the staff report, page 31, under Environmental Resources, Chapter 16.142.020 this fundamental requirement for multi-family development is not addressed. 20% Open space is required for common open space. There are associated minimum standards per Chapter 16.142.020(1-4). The application should not proceed until this requirement is fully addressed. Staff should not be arguing in behalf of the application (unless of course, staff represents the true applicant—which is the case) to deviate from these requirements. The staff report confirms it needs more information and says:

The applicant did not address this section in their narrative. It could be argued that the PUD open space requirements supercede or at least count towards the multi-family requirements. It could also be argued that urban multi-family developments do not come with the same recreational expectations as a multi-family development in other areas. That said, Sherwood is a very family oriented community and it is anticipated that some families will locate in the multi-family units. In order to avoid confusion when the detailed plan development plans are submitted for the residential phases, the applicant will need to address how residents will recreate. Specifically, the applicant must discuss whether private open areas or semi-public spaces (gym, rec room, pool, etc,) will be provided for residents in addition to the public open space provided by the plaza area.

At the least, the City of Sherwood/staff are co-applicants—they should NOT be making calls of completeness, or generating the narrative analysis for the application. Once you realize that the landowner applicant is generating the report, the entire analysis is explained. Once the reader of the staff report understands that there is not merely a potential conflict of interest with the Sherwood planning department generating this report there is an actual conflict of interest—their report becomes unusable for a fair and open hearing with third party neutral analysis.

IMPROPER HEARING NOTICE

As with the sign code in early 2009, the noticing given to impacted residents in the area is faulty. It would be wrong for the Planning Commission to assume that residents not showing up for tonight's hearing in the areas surrounding the proposed PUD have no problem or issue with the proposed land use changes. MANY OF the IMPACTED RESIDENTS don't even know what is happening. After you take into account the width of the streets near the proposed PUD, a 100 foot notice minimum barely reaches the first line of houses ringing the proposed PUD. Wider notice should be given to the properties located within the Urban Renewal Agency (URA) boundary—it is its own district as well as notice given to the properties adjoining the URA boundary for the next 100 feet.

IMPROPER UTILIZATION OF THE LAND USE PLANNING PROCESS TO GAIN A TECHNICAL DECISION

Sherwood has occasionally experienced technical approvals due to violations of the 120 day rule for applications. In some regard, the way the staff report was thrown together it could be positioned for a technical approval because staff deemed the application complete on September 24, 2009. Knowing that Commission and Council meetings during the holiday months of November and December are few, the Planning Commission must ask the applicant to agree to a continuance so the 120 day deadline of January 12, 2010 is extended.

On page 11 the staff report contains a description of fundamental PUD approval criteria:

"#9. That the general objectives of the PUD concept and the specific objectives of the various categories of the PUDs described in this Chapter have been met." ...

and Section 16.40.010.B(1) Encourage efficient use of land and resources that can result in savings to the community, consumers and developers.

When staff's official response to this criteria is to state "The plaza will provide a space to congregate and act as the City's living room", it is hard to believe that the staff is being genuine in their preparation and delivery of a well reasoned and factually justified report to the people of this town. I don't think we need to be reminded again of the Home Depot fiasco where staff deemed the report complete, called Home Depot "a lumber yard" and waited until the 120 days expired.

THE CITY MUST DISCLOSE AND DETAIL ITS FINANCIAL ARRANGEMENTS FOR THIS PROJECT BEFORE ANY LAND USE APPROVALS ARE GRANTED

The URA/City is attempting to sell some parts of its proposed PUD far below market value to an identifiable entity for reasons that are not clear or understandable. By the city's own narrative, and by

further acknowledging that the city staff charges to URA for their time and overhead expended on this project it appears the City is selling an \$8 million piece of land for \$1.5 million with the city also contributing the costs for road construction. These are typically costs to a developer. Again, once the reader of the staff report understands that there is not just a potential conflict of interest for the Sherwood staff, but also an actual planning department conflict of interest since this is the project that is keeping monies coming into their department—their report becomes unreliable. We have no way to analyze the costs vs. the benefits that this proposal may bring to the citizens and surrounding neighborhoods.

Additionally, the City of Sherwood currently has a Records Request policy that charges typically \$65 and hour, plus any attorney charges they deem chargeable in addition to the actual, simple copying process. They require that the ½ of the fee be collected up front before any search is done. The point is, any citizen that wants to find out about what the city is doing is charged exorbitant fees and the staff will play word games regarding words—they have done it personally with us and also with the Sherwood Gazette. With the Gazette, it took calls to the County District Attorney's office before the City of Sherwood would release the tort claim information on Chief Middleton that the Gazette was requesting. Advice from Berry and Elsner attorneys that staff uses had the city arguing that a tort claim wasn't specifically a tort claim. In the case with us, a "resume" apparently is different than filling out a City of Sherwood job application form that lists the person's job history, education, and special licenses and awards. Additionally, you get double charged hundred's of dollars because of their word play.

With this kind of unusual and draconian records request policy and execution it is even more important that the planning commission ask staff to provide relevant materials to the public in relation to the Cannery PUD proposal, remodeling and sales contemplated. Again, no one is able to evaluate the cost / benefits of the City's zone change proposals without understanding how the benefits are enumerated and accounted for to the public, the URA, the City, the city staff, and the impacted residents, property, and business owners.

VIOLATIONS OF THE INTENT OF A PLANNED UNIT DEVELOPMENT AND VARIANCE REQUESTS

Several exceptions to the underlying zoning are being requested in this application.

- **The application fails in a central provision of the PUD and should be rejected out of hand on that alone.** See Staff report p.31 Chapter 16.142.020.
- **There is a violation of the Height Restriction for PUDs next to MDRL lands**

From Section 16.40.060-C Non-Residential (Commercial or Industrial) PUD

4. Height

Maximum building height is unlimited, provided a sprinkler system is installed in all buildings over two (2) stories, as approved by the Fire District, excepting that where structures are within one hundred (100) feet of a residential zone, the maximum height shall be limited to that of the residential zone.

The underlying zone next to where the apartments are being proposed is MDRL. The height restrictions in that zone are two stories or 30 feet whichever is less:

16.16.040-C Dimensional Standards

C. Height

Except as otherwise provided for accessory structures, and for infill development under Chapter 16.68, the maximum height of structures shall be two (2) stories or thirty (30) feet, whichever is less. Chimneys, solar and wind energy devices, radio and TV aerials, and similar structures attached to residential dwellings and accessory buildings, may exceed this height limitation by up to twenty (20) feet. (Ord. 2006-021; 86-851 § 3)

- **There is a wrongful transfer of density.** This project cannot cluster the density across the street from MDRL zoning that has a maximum building height of two stories of 30 feet whichever is less. (See Zoning Map attached from City of Sherwood's web site.) Also see Under the General Provisions of the Planned Unit Development:

Section 16.40.040 General Provisions Subsection C. Multiple Zone Density Calculation

When a proposed PUD includes multiple zones, the density may be calculated based on the total permitted density for the entire project and clustered in one or more portions of the project, **provided that the project demonstrates compatibility with the adjacent and nearby neighborhood(s) in terms of location of uses, building height, design and access. (Bold added)**

- **Parking standards are violated for the proposed apartments in two ways:** the ratio of parking spaces per unit and the applicant is requesting that 50% of the parking spaces be allowed as compact spaces.
- **This project will overburden surrounding properties** where there is already a shortage of parking for businesses and residents.
- **The traffic study incorrectly characterizes the Historic Old Town railroad central business district.** The streets are narrow, automobile constricting and thanks to the city those that have been rebuilt are even more limiting. The traffic study is wrong and the economic analysis is misleading and inaccurate. This is an antique mall/artist gallery area with eventually a Performance Arts Center that has a small convenience store as the only retail food shopping. There are a few sit down restaurants that serves liquor. Most of the dining in another diner is oriented toward catering and is only open on the weekends. There are no fast food businesses. Auto traffic will increase exactly at the wrong times and harm the business core. In addition, the apartments will over load the existing parking.
- **The 20% open space requirement for the apartments and the provisions of Chapter 8 Environmental Resources Section 16.142.020 (1-4) are being violated.** The language in the code is not optional. The apartments must have 20% open space minimum dedicated to the tenants with at least 800sf of grass or equivalent and 15 ft wide strip.

WHAT ABOUT THE PERFORMING ARTS CENTER?

The City of Sherwood's urban development group and the agencies are ultimately under the control of City Council. The governing bodies are the same. The City of Sherwood intends to continue to own through the URA, the Machine Works Building. This 13,500sf building is owned by the City and is proposed to replace the Robin Hood Theater—a building that the city held in trust for the arts community and destroyed in 2003. The original intent of the URA was and is still to be that the community would have a facility that would be "a major backbone" for the district. This PUD application, zoning change and subdivision should not move forward until surrounding neighborhoods and citizens know that the Arts Center is fully funded, when will be built, what it will contain, and all the other typical details needed to see what the citizens will have in Old Town. The city needs to give back the value of the gifting from the Robin Hood Theater that it has been holding on to for almost 12 years.

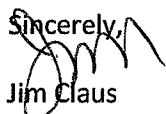
IN SUMMARY

This is not the full scope of the issues that make this application fail in its present form. Simply put the City Sherwood staff is proposing cobbling together a piece of property that they then subdivide with a road and public improvement plan that the citizens will have to pay for. The road and its costs do not even have an estimate in the report but are a material part to this proposed project. They are then proposing to sell off all but two phases which is at a radically discounted price. In fact an argument can be made that a road is necessary to be able to build the commercial and residential that the land is being sold for little or nothing.

They will then use the tax base generated by these subsidized apartments to borrow additional funds to put in the improvements—further compounding the citizens of Sherwood losses. The PUD is a smoke screen for a zoning change that would normally call for a variance application that could not be granted because of the extreme nature of the changes being requested such as no dedicated recreational space for the apartments, a 100% + increase in density, and significantly reduced parking standards.

The intent of the purchase of the land is being violated, financial good sense is being violated and arguably the entire tax base of the downtown is being harmed. For sure the antique destination oriented stores in the downtown by this 120% increase in the parking will be substantially negatively impacted. This does not meet the fundamental tests for a PUD, there is no evidence to suggest the same, and such statements "this is Sherwood's living room" are ridiculous, deceitful and misleading statements.

The waste, fraud, and abuse of urban renewal and public funds has been shameful. Destroying a Central Business District's remnant architecture, its destination oriented business just to generate funds to keep city staff afloat is going too far. When a PUD is used to blindly change zoning transportation plans and the entire ambiance and livability of neighborhoods it is not the PUD that needs to be rejected it is only non-resident city staff that would conceive of such an action.

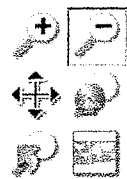
Sincerely,

Jim Claus

Tools

City of Sherwood, Oregon

X = 7600557 Y = 625357 Lon: -122.8406 Lat:

Navigation

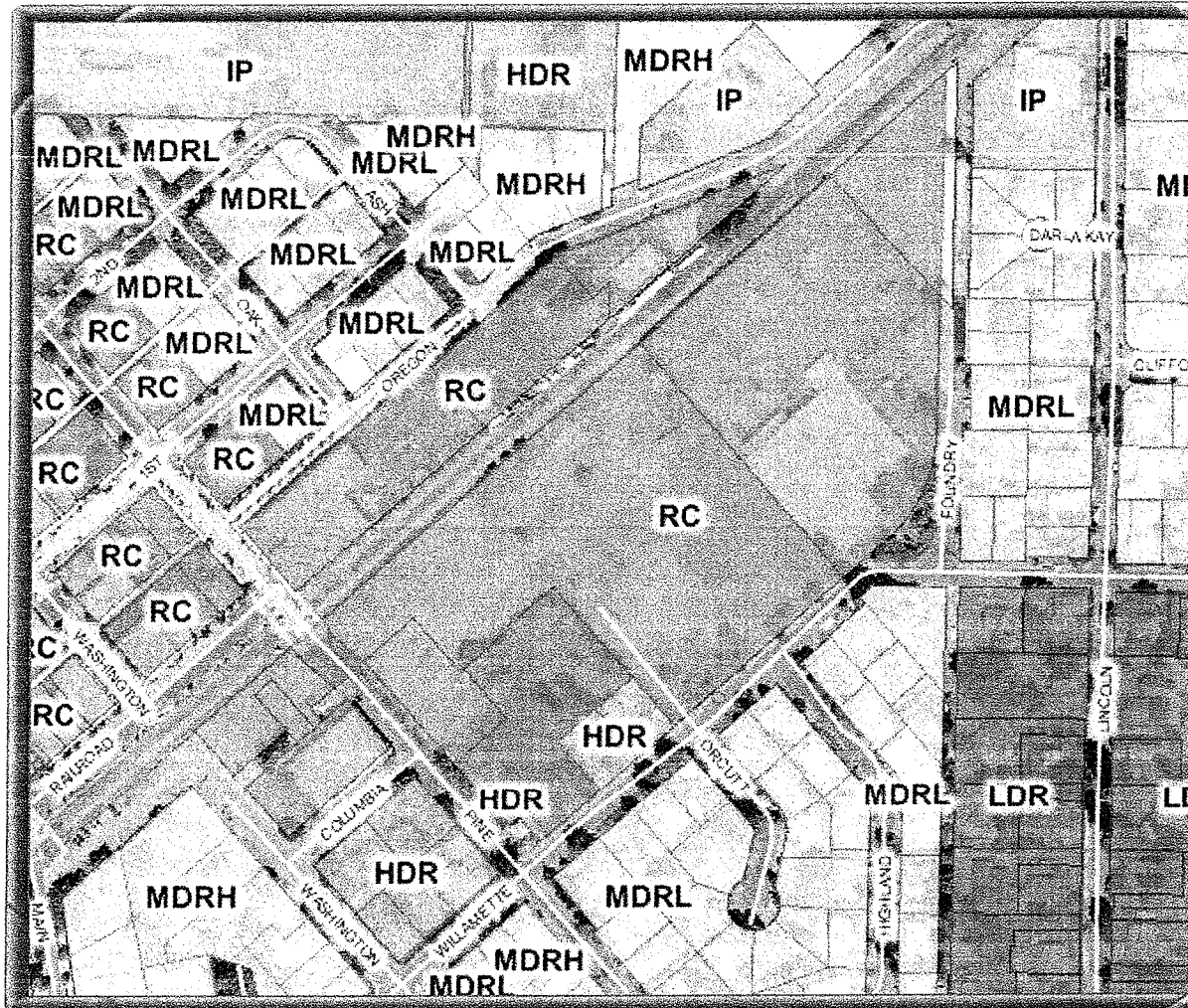


Query/Info



Selection

System



Scale 1: 3,498